contra, State v. *Dreany,* 65 Kan. 292. And even where it is required that the names of all the parties to the conspiracy be alleged, it is not essential to the sufficiency of the indictment that all such parties be jointly charged with the commission of the offense. *State* v. *Dreany, supra.* When, as in the principal case, the indictment charges the defendants therein named with having conspired "with divers other persons to the said grand jurors unknown," and it appears by the proof that such other persons are known to the grand jury, the question arises as to whether this averment is a material one and the variance fatal. On this point the courts have quite uniformly held that the variance is not fatal and that the names of the parties with whom the indicted defendants conspired are not descriptive of the offense. *Jones* v. *United States,* 179 Fed. 584; *People* v. *Smith,* 239 Ill. 91; *People* v. *Mather, supra.* Thus, it follows that the averment is mere surplusage. The court in the principal case subscribes to this view, but, as it points out, quoting from the opinion in *Cochran* v. *United States,* 157 U. S. 286: "The true test is, not whether it (the indictment) might possibly have been made more certain, but whether it contains every element of the offense intended to be charged, and sufficiently apprises the defendant of what he must be prepared to meet."

EVIDENCE—OPINION BY AN EXPERT WITNESS ON "THE VERY ISSUE" INADMISSIBLE.—D had been convicted of murder and sentenced to death. Pursuant to a statute which provided for a stay of execution until recovery of persons becoming insane between conviction and execution, D's counsel petitioned that a jury be impaneled to try D's sanity. By the court's order three alienists examined D and at the hearing without a jury were permitted to express their opinion as to D's sanity at the time of the examination. On a writ of error it was *held,* that there should be another hearing before a jury and that the opinions of the experts should not be received on the very question the jury were to pass upon. *People* v. *Geary* (Ill., 1921), 131 N. E. 652.

Although the issue is a bit beclouded by the suggestion that hypothetical questions might properly be asked the experts, the question of the admissibility of an expert's opinion upon "the very issue" seems to be fairly raised. Authority for the decision may be found in *C. & A. R. Co.* v. *R. Co.,* 67 Ill. 145; *Goddard* v. *Enzler,* 222 Ill. 462; and *Keefe* v. *Armour & Co.,* 258 Ill. 28. But even the Illinois court is not consistent. The issue in the instant case is precisely the same as in the hearing on a petition to have a conservator appointed for an alleged insane person. In such a case it has been held that the opinion of a lay witness who was well acquainted with the respondent was admissible. *Neely* v. *Shephard,* 190 Ill. 637. The essence of the objection is that such opinions usurp the function of the jury. However, the jury is always at liberty to question not only the facts upon which the opinion is based but also the soundness of the opinion. The reason for admitting expert opinion in matters of skill and science is to help the jury in determining facts with which the layman is unfamiliar. This help is equally useful whether one or several issues are to be tried. Many cases have held

that the coincidence of the question with the very issue in the case is not *per se* a ground for exclusion. *Fenwick* v. *Bell,* 1 C. & K. 312; *Mansell* v. *Clements,* L. R. 9, C. P. 139; *Ryder* v. *State,* 100 Ga. 528; *Poole* v. *Dean,* 152 Mass. 589; *Donnelly* v. *R. Co.,* 70 Minn. 278; *Nebonne* v. *R. Co.,* 68 N. H. 296; *Littlejohn* v. *Shaw,* 159 N. Y. 188; *Western Coal & M. Co.* v. *Berberich,* 94 Fed. 329. See WIGMORE ON EVIDENCE, §1921.

LIEN—LOSS BY LIENOR'S ATTACHMENT.—The holder of a statutory lien for repairs on a motor boat in his possession sued out an attachment to enforce payment of the charges due. The sheriff levied on the property in pursuance of this process, lienor retaining physical possession of the boat and giving the officer a receipt for it. *Held,* that by causing an attachment to be levied on the property the lienor had waived his lien. *Fidelity and Deposit Co.* v. *Johnson* (1921), 275 Fed. 112.

A "lien is neither a jus ad rem nor a jus in re, but a simple right of retainer. The voluntary parting with possession of goods will amount to a waiver or surrender of the lien." *Sensenbrenner* v. *Mathews,* 48 Wis. 250. In England as early as 1828 it was held that the lienor himself, having called on the sheriff to sell his security, he set up no lien against the sale, and although the property never left his physical possession because he purchased it from the sheriff, he held possession by virtue of the sale and not by virtue of the lien. *Jacobs* v. *Latour,* 5 Bing. 130. In the United States, Massachusetts and Iowa have gone deepest into the subject. The Massachusetts view seems to be that the lienor loses his lien by surrendering to the attaching officer, unless he specifically reserves his lien. *Swett* v. *Brown,* 5 Pick. 178; *Townsend* v. *Newell,* 14 Pick. 332; *Legg* v. *Willard,* 17 Pick. 140; *Whitaker* v. *Sumner,* 20 Pick. 399; *Evans* v. *Warren,* 122 Mass. 303. Substantially the same view is taken by Iowa, although it does not appear that a lien may be reserved there through notice to the attaching officer. In reconciling the decisions in this state which hold that a statutory material man's lien is not lost through attachment, the court says in *Stein* v. *McAuley,* 147 Iowa 630: "If a lien depends upon possession and continued possession is essential to the lien, the party holding such lien cannot surrender his possession through an attachment and then assert his lien. *Citizen's Bank* v. *Dows,* 68 Iowa 460." *Contra* are *Arendale* v. *Morgan & Co.,* 5 Sneed. (Tenn.) 703; *Lambert* v. *Nicklass,* 45 W. Va. 527; *Jones et al.* v. *Ironton Garage Co.* 9 Ohio App. 431, which take the view that the lienor does not lose his lien even if it is of such a nature as to depend on possession. In the latter two important cases the court fails to recognize that under the facts legal possession passed out of the lienor by the attachment. The reasoning of the West Virginia court on this point is the more plausible, this tribunal assuming that the officer took possession as the lienor's agent, so that possession did not leave the lienor. But the broad contention that this agency exists is contrary to authority. The attaching officer is the agent of the plaintiff only if the writ served is void on its face; otherwise he is not the agent of the plaintiff, but the agent of the law. *Wilosn* v. *Tummon,* 1 D. & L. 513. Goods, when properly attached, are strictly in the custody